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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RM-9210

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
End User Common Line Charge	)	CC Docket No. 95-72

Reply Comments

The Ad Hoc Telecommunications Users Committee (Ad Hoc) hereby replies to comments that were filed in response to a Petition for Rulemaking filed on December 9, 1997 by the Consumer Federation of America, the International Communications Association and the National Retail Federation (hereinafter jointly referred to as Petitioners). The comments confirm the need for the Commission to commence a proceeding that will focus on prescribing cost-based interstate access charges.

Before replying to specific comments, Ad Hoc offers some general observations that may prove helpful to the Commission. Users, certainly Ad Hoc's members, would benefit greatly from effective competition in the local exchange and access service market. Prices would reflect relevant economic costs and state-of-the-art services would be available. Ad Hoc has no incentive to mischaracterize the level of competition in the local exchange and access

service market. Maintaining that competition is not effective when it in fact is effective would deprive Ad Hoc's members market choices and the opportunity to use their considerable ability to strike advantageous bargains. On the other hand, asserting that the market is more competitive than actually is the case may yield some short term price reductions, but in the long run will harm the development of effective competition.

The incentives of the carriers obviously are narrower. Incumbent local exchange carriers (ILECs), particularly the Regional Bell Operating Companies (RBOCs), are prone to overstate the level of competition in the local exchange and access service market to free them to enter new markets and to win pricing flexibility that they could use to limit the growth of competition in their traditional markets. Long distance carriers have just the opposite incentives. They wish to protect their market position while gaining access to the local exchange carriers' markets. Accordingly, some may question the long distance carriers' contentions regarding the level of competition in the local exchange and access service market. None of the foregoing is more than the obvious, but at times a statement of the obvious can be helpful in stripping away rhetoric that camouflages underlying facts.

Ad Hoc also suggests that the current displeasure with the rate of change in the wake of enactment of the Telecommunications Act of 1996 is at least unwarranted. As the Commission knows well from its experience with the long distance service and customer premises equipment markets, effecting a transition that changes a market that has been monopolized to one that is

effectively competitive takes more than a few years, and requires tough-minded decisions, decisions that would not have been necessary if the Commission had been swayed by rhetoric, rather than focused on fact.[1]

Under current circumstances, the Commission must make some decisions that will not be popular with the ILECs and their supporters. But in large measure these decisions have been brought on by ILECs and their legal assault on the Commission decisions that held the promise of speeding the trip to an effectively competitive local exchange and access service market. The Commission, however, also has the opportunity to give the ILECs an incentive to price their access services at economic levels and in the process to deal with the so-called "stranded investment" problem.

Contrary to ILECs' claims, Petitioners have not sought untimely reconsideration of the *Access Reform Order*.[2] Petitioners argue that the Eighth Circuit decisions holding: (1) that the FCC does not have jurisdiction to require state regulatory authorities to use Total Element Long Run Incremental Costs (TELRIC) to set the rates for unbundled network elements (UNEs); (2) that the ILECs are not required to reassemble UNEs for would be competitors; and (3) that the Commission may not consider UNE pricing in evaluating RBOC applications to enter the long distance market under section 271 of the

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[1] At paragraph 270 of the *Access Reform Order,* the Commission observed that, "Deregulation before competition has established itself ... can expose consumers to the unfettered exercise of monopoly power and, in some cases, even stifle the development of competition, leaving a monopolistic environment that adversely affects the interests of consumers." *Access Charge Reform*, CC Docket 96-128, First Report and Order, 12 FCC Rcd. 15982 (1997), *appeal docketed sub nom., Southwestern Bell Telephone Co. v. FCC*, No. 97-2618 (8th Cir., 1997) ("*Access Reform Order*").

[2] *Access Reform Order.*

Communications Act are fundamental factual changes that virtually guarantee local exchange competition will not by the year 2001 drive the currently excessive interstate access rates to TELRIC levels.[3] Competition that would save consumers from access charges that are billions of dollars too high is not on the horizon. The basis for the Commission's decision not to prescribe TELRIC-based repricing of interstate access service has been eliminated. In light of the changed circumstances, Petitioners' request that the Commission begin a rulemaking to drive interstate access service rates to TELRIC levels is entirely proper as a procedural matter. Under such circumstances, as AT&T points out, the Commission cannot reasonably refuse to begin the rulemaking.[4]

ILEC suggestions that the aforementioned appellate setbacks are not material to the growth of effective competition in the local exchange service market are not credible.[5] The Commission's decision to forego a prescriptive approach to setting access service rates was undeniably predicated on its view

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[3] *Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996), *aff'd. in part and vacated in part sub nom., Iowa Util. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997); *modified*, 1997 U.S. App. LEXIS 281652 (8th Cir. Oct. 14, 1997), *cert. granted*, Jan. 26, 1998.

[4] Comments of AT&T Corp. In Support of Petition for Rulemaking, at 16 –17.

[5] The ILECs' arguments are phrased differently, but all carry the same meaning. For example, U S West contends at pages 3-4 of its comments that the appellate setbacks to the Commission's program for opening the local exchange market to competition, "[R]epresents no material change over the situation as it existed when the Commission its Order...." SBC, the leader of the appellate challenges maintains at page 2 of its comments that, "Nothing has occurred since issuance of the *Access Reform Order* to change the Commission's relevant conclusions on the use of a market-based strategy." As a final example of the ILECs' response to Petitioners' assertions regarding changed circumstances, Ad Hoc notes the statement at page 5 BellSouth's comments that, "Recent litigation regarding requirements under the 1996 Act have not had the purpose of hindering competition but merely of assuring that the relevant statutory provisions enacted by Congress are interpreted and applied as intended."

that its *Local Competition Order* would exert effective competitive pressure on access service rates.

> If we successfully reform our access charge rules to promote the operation of competitive markets, interstate access charges will ultimately reflect the forward-looking economic costs of providing interstate access services. This is so, in part, because Congress established in the 1996 Act a cost-based pricing requirement for incumbent LECs' rates for interconnection and unbundled network elements, which are sold by carriers to other carriers. As we have recognized, interstate access services can be replaced with some interconnection services or with functionality offered by unbundled elements. Because these policies will greatly facilitate competitive entry into the provision of all telecommunications services, we expect that interstate access services will ultimately be priced at competitive levels even without direct regulation of those service prices.

Access Reform Order, at paragraph 262, footnote omitted. The Commission certainly understands that far more than merely opening local exchange market to competitive entry is needed to transform that market into an effectively competitive market. The level of investment that would be needed to support facilities-based competition is so large that such competition will not in the foreseeable future, if ever, drive interstate access service rates to competitive levels. Without the availability at TELRIC-based rates for assembled UNEs, there is no realistic prospect for effective local exchange service competition.[6]

[6] AT&T's Comments at page 7 quote that part of the government's Petition for Certiorari of the Eighth Circuit's decision to vacate the section of the Commission's Rules requiring ILECs to provide assembled UNE packages for CLECs that states that the court's decision, "imperils the competition that Congress sought to bring to local telephone markets by granting new entrants rights of unbundled access to existing networks."

AT&T's comments provide much factual information that is entirely consistent with Ad Hoc's view that the local exchange market is not effectively competitive at this time, and that the Commission cannot reasonably rely on market forces to produce competitive access service rates. According to AT&T,

> Even incumbent LECs in those states that are "at the forefront" of efforts to open local markets to competition have thus far lost only a tiny share of the local market, and the Commission has confirmed that there is no reason to expect the crawling pace of competition to accelerate "dramatic[ally]" in the near future.

AT&T Comments at 8. The prospects for a significant increase in local exchange service competition are not good, given the obstacles that AT&T describes in its comments. These obstacles include ILEC disassembly of already assembled UNEs, very high collocation charges, unavailability of collocation space and very long waits for virtual collocation installations, pricing that makes competition infeasible and the unavailability of nondiscriminatory operations support system interfaces.[7] Ad Hoc agrees with the view that at this time it would not be reasonable for the Commission to rely on market forces to drive interstate access service rates to competitive levels.

In view of the foregoing, Ad Hoc affirms its support for Petitioners' request that the Commission commence a rulemaking to reinitialize access service price cap indices so that interstate access service rates will be set at competitive levels. If this effort requires difficult cost studies, so be it.

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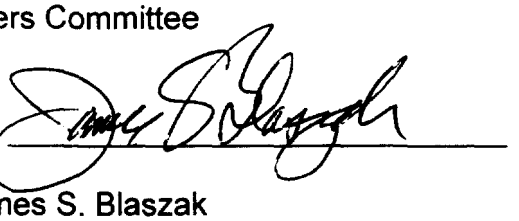
[7] AT&T Comments at 4-16.

Consumers have a legitimate expectation that the Commission will expend resources so that its regulatory program will provide consumers with pricing and benefits that are as close as possible to those that they would experience if the local exchange and access service market was effectively competitive.

Respectfully submitted,

Ad Hoc Telecommunications
Users Committee

By: 

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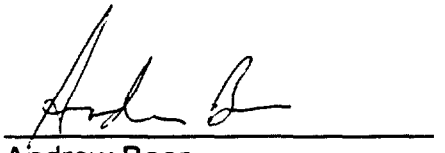
200.03/access reform/Pldg reply re. ICA pet4rm

Certificate of Service

I, Andrew Baer, hereby certify that true and correct copies of the foregoing Reply Comments on the Petition for Rulemaking filed by the Consumer Federation of America, International Communications Association, and National Retail Federation in CC Docket No. 96-262, CC Docket No. 94-1, CC Docket No. 91-213, and CC Docket No. 95-72 were served this 17th day of February, 1998 via first-class mail to the following persons:



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